

## BY-LAWS

### OF

## COVE LAKE HOMEOWNERS' ASSOCIATION, INC.

### ARTICLE I

**NAME AND LOCATION.** The name of the corporation is Cove Lake Homeowners' Association, Inc., hereinafter referred to as the "Association". The principal office of the association shall be located at of 6111 Peachtree Dunwoody Road, Suite 102, Building F Atlanta, Georgia 30328, but meetings of members and directors may be held at such places within the State of Georgia, as may be designated by the Board of Directors.

### ARTICLE II

#### DEFINITIONS

Section 1. "Association" shall mean and refer to Cove Lake Homeowners' Association, Inc., its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean and refer to the Association's board of directors as provided for in the Association's Articles of Incorporation and By-Laws.

Section 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Declarant" shall mean and refer to Benchmark/Cove Lake, L.L.C., and its successors and assigns.

Section 5. "Declaration" shall mean and refer to the Declaration of Easements, Covenants, and Conditions and Restrictions for the Subdivision recorded in the office of DeKalb County Superior Court Deed Records.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and delineated public streets.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 8. "Other Builder" shall mean and refer to any individual or entity which acquires one or more undeveloped Lots from the Declarant for the purpose of development.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any improved Lot which is a part of the Property, and on which property there exists a completed home which is or has ever been occupied as a residence, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding those Lots owned by the Declarant and Other Builders.

Section 10. "Property" shall mean and refer to that certain real property described in the "Declaration", and such additional property thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the "Declaration".

Section 11. "Subdivision" shall mean and refer to all or any portion of the Property which has been recorded as such per plat in the office of the Superior Court of DeKalb County, and any additional property which may be added to the Subdivision in the future in accordance with the Declaration.

### ARTICLE III

#### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of organizational meeting of the Association, and each subsequent regular annual meeting of the Members shall be held on the first Thursday in December each year thereafter, or on such other date as may be designated by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President of the Association or by the Board of Directors or upon written request of one-fourth (1/4) of all members entitled to vote of either Class A or Class B.

Section 3. Notice of Meetings. Notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by posting a sign at the entry to the Subdivision at least 72 hours prior to such meeting denoting the time, date and place of the meeting.

Section 4. Quorum. The presence of the Members entitled to cast, or of proxies entitled to cast, 50% of the votes of each class of membership shall constitute a quorum at a meeting for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting, set another date, time and place, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 6. Suspension of Privileges for Non-Payment of Assessments. In the event any Member shall at any time become delinquent in the payment of assessments properly levied by the Board of Directors in accordance with the terms of the Declaration, the Board of Directors shall be entitled to suspend the right of such Member to vote, and the right of such Member to use any amenities and Common Areas of the Subdivision. Before suspending the voting rights and right to use Common Areas of any member, the Board of Directors will first give such Member not less than 15 days prior written notice that the Board intends to take such action. Such notice shall provide that the Member shall have 15 days after receipt of notice within which to respond and state to the Board in writing any reason why such Member believes that such action is not appropriate. In the event any Member notifies the Board in writing that such Member believes that the action proposed by the Board is not appropriate, then within 30 days after receipt of such Member's response a hearing shall be held at which the Member shall be entitled to present testimony and evidence as to why the action proposed by the Board of Directors is not appropriate. The Board of Directors shall hear any evidence presented by such Member, and shall make a determination after the hearing as to whether or not to suspend the voting rights and rights to use Common Areas of such Member. The decision of the Board of Directors in such regard shall be final. Any such hearing shall be held in accordance with the requirements of O.C.G.A. Section 14-3-621.

#### ARTICLE IV

##### BOARD OF DIRECTORS- SELECTION AND TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors consisting of three members, who need not be Members of the Association.

Section 2. Term of Office. The initial directors of the Association shall be Fred J. Schwaemmle, Jr., Ralph Buck Davis, and Jonene Fine. Each Director shall serve for a term of three years after the date such Director is elected. The terms of the Directors shall be staggered, so that one Director shall be replaced or reelected each year at the annual meeting of the Members.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by the affirmative vote of Members representing 75% of the votes entitled to be cast at a special meeting of the Members called for such purpose. In the event of death, resignation or removal of a director, his successor shall be selected by majority vote of members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for service as a director to the Association. However, any director may be paid for professional work done for the Association as an independent contractor approved by the Board even if said work is related to a coexistence with his or her work as director and for his or her actual expenses in performance of his or her duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written or

oral approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nominations for election to the Board of Directors shall be made from the floor at the annual meeting. Such nominations may be made from among the Members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot or voice vote. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The person receiving the largest number of votes shall be elected.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board of Directors shall be held at such place and hour as may be determined by the Board, without notice to Members.

Section 2. Special Meetings. A special meeting of the Board of Directors shall be held when called by the President of the Association, or by any director, or by 25% of votes of either class of membership in the Association after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and the right to use the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association, subject to the provisions of Article III, Section 6;

(c) exercise for the Association all powers, duties and authority vested in or delegate to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, lawyer, an independent contractor, or such other employees as they deem necessary and to prescribe their duties.

Section 2. Duties. It shall be the right of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of either class of Members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least fifteen (15) days in advance of each annual assessment period;

(2) provide notice of each assessment to every Owner subject thereto in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against an Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained, or improved, and taxes paid therefore;

- (h) cause the mowing of front lawns as provided in the Declaration;
- (i) cause the entrance of the Subdivision to be maintained;
- (j) otherwise carry out the purposes of the Association.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create. Officers need not be Members of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors after the first annual meeting and then following each second annual meeting of the members, by majority vote of the members of the Board. The initial officers of the Association shall be: President: Fred J. Schwaemmle, Jr.; Vice President: Ralph Buck Davis; Secretary: Ralph Buck Davis; Treasurer: Fred J. Schwaemmle, Jr.. The officers shall serve until their successors are duly elected by the Board of Directors, or until their earlier death or resignation.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Multiple Offices. The offices of President, Vice President, Secretary, and Treasurer may be held by the same person except no person shall be both President and Secretary.

Section 7. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and may sign all checks and promissory notes.

Vice President

(b) The Vice President shall action the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board and may sign all checks and other written instruments, including Promissory Notes.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Directors, by majority vote, may appoint an Architectural Control Committee composed of at least one member of the Board, as provided in the Declaration. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

The books, records, and papers of the Association shall at all times, upon reasonable notice, be subject to inspection by any Member. The Articles of Incorporation, the Declaration

and the By-Laws of the Association shall be available for reasonable inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI

### ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments and fines, which are secured by a continuing lien upon the property against which the assessment or fine is made. Any assessment or fine which is not paid when due shall be delinquent. If the assessment or fine is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of 12 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments or fines provided for herein by nonuse of the Common Area or abandonment of his Lot.

## ARTICLE XII

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Cove Lake Homeowners' Association. Inc.

## ARTICLE XIII

### AMENDMENTS

Section 1. These By-Laws may be amended at a regular or special meeting of the Members by a vote of 75% of the votes entitled to be cast at a meeting at which a quorum of Members is present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

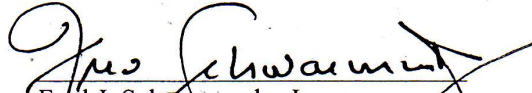
## ARTICLE XIV

### MISCELLANEOUS

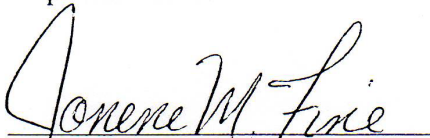
The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.



IN WITNESS WHEREOF. we, being all of the directors of the Association, have hereunto set our hand this 28 day of July, 1998

  
Fred J. Schwaemmle, Jr.

  
Ralph Buck Davis

  
Jonene Fine

**DECLARATION  
OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
OF COVE LAKE**

THIS DECLARATION is made on the date hereinafter set forth by  
Benchmark/Cove Lake, LLC hereinafter referred to as "Declarant"

FILED AND RECORDED THIS  
26 DAY OF June, 19 98  
AT 8:30 A.M.

WITNESSETH:

CLERK OF SUPERIOR COURT  
DEKALB COUNTY, GEORGIA

WHEREAS. Declarant is the Owner of certain real property in Land Lot 57, 58,  
71, and 72 of the 16th District, County of DeKalb, State of Georgia, which is more  
particularly described as:

All that tract or parcel of land being more particularly described as Lot 1, Lots 56  
through 60 inclusive, and Lots 112 and 113, each as shown on the Final Plat of Cove Lake  
- Unit One, by Bingham & Associates, Inc., dated January 1, 1998, recorded at Plat Book  
105 Page 16, DeKalb County Records; and Lots 2 and 3, Lots 54 and Lots 55, and Lots  
61 through 111 inclusive, each as shown on the Final Plat of Cove Lake - Unit Two dated  
April 8, 1998, recorded at Plat Book 105 Page 25, Dekalb County Records.

All Lots in this Planned Unit Development are subject to the Covenants.  
Additional land may be added to this Declaration in accordance with Article VII,  
Section 4.

NOW THEREFORE. Declarant hereby declares that all of the property described  
above shall be held, sold, and conveyed subject to the following easements, covenants,  
conditions, and restrictions, which are for the purpose of protecting the value and

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desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, and assigns, and shall insure to the benefit of each holder thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to Cove Lake Homeowners Association, Inc., its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Association's board of directors as provided for in the Association's Articles of Incorporation and By-Laws.

Section 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned or Easement Rights by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at this time is as follows:

1. An Easement over and upon Lot One as shown on the Final Plat of Cove Lake - Unit One. This Easement is for the purpose of maintaining an Entrance Monument and accompanying landscaping and utilities.
2. An Easement for Access over and upon Lots 81 and 82 as shown on the Final Plat of Cove Lake - Unit Two. This Easement is for the purpose of providing pedestrian access to the southern side of the lake.
3. An Easement over the rear portions of Lots 75, 76, 77, 78, 79, 80, 81, and 82 as depicted on the Final Plat of Cove Lake - Unit Two. This Easement is

provided for recreational use, including but not limited to fishing, for all members of the Association.

The Declarant hereby certifies that this Common Area has been conveyed to the Association free and clear of all encumbrances. Absolute liability is not imposed on Members for damage to the Common Area or Lots, including improvements, in the Planned Unit Development; instead, Members are only responsible for their own negligence and the negligence of their minor children, employees, and agents as provided by Georgia State Law.

The Common Area shall be subject to assessments. The expenses for maintenance and any improvement of the Common Area, including taxes, shall be paid by the Association. The designated Common Area is not dedicated for the use by the general public but is dedicated to the common use and enjoyment of the Members of the Association.

Section 4. "Declarant" shall mean and refer to Benchmark/Cove Lake, LLC, it's successors and assigns.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and delineated public streets.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration.

Section 7. "Other Builder" shall mean and refer to any individual or entity which acquired one or more undeveloped Lots from the Declarant for the purpose of development.

Section 8 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any improved Lot which is a part of the Property, and on which property there exists a completed home which is or has ever been occupied as a residence, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding those Lots owned by the Declarant and Other Builders.

Section 9 "Property" shall mean and refer to that certain real property herein described, and such additional property thereto as may hereafter be brought within the jurisdiction of the Association in accordance with Article VII, Section 4.

Section 10 "Subdivision" shall mean and refer to all or any portion of the Property which has been recorded as such per plat in the office of the Superior Court of Dekalb County.

## ARTICE II

### PROPERTY RIGHTS

Section 1 Member Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreation facility situated upon the Common Area.

- (b) the right of the Association to suspend the voting rights and right to use the facilities by a Member for any period during which any assessment against a member's Lot remains unpaid.
- (c) the right of the Association to suspend the right to the use of the facilities by a Member for a period not to exceed 60 days, following the "cure" of an infraction for any infraction of the Association's rules and regulations.
- (d) the right of the Association to dedicate or transfer all or any part of the common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

**No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members in person or by proxy has been recorded.**

- (e) The right of the Association to mortgage or convey all or any part of the common Area for such purposes and subject to such conditions as may be agreed to by the Members.

**No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members in person or by proxy has been recorded.**

- (f) if ingress or egress to any residence is through the Common Area, any conveyance or encumbrance of such area is subject to the Member's easement set forth in this Section.

Section 2.     Declaration of Use Declaration of Use Declarant, any Owner or Other Builder may delegate, in accordance with this Declaration, has right to enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1     The Declarant, every Owner and every Other Builder shall be Members of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 2     The Association shall have two classes of voting  
Membership:

Class A             Class A Members shall be all Owners and Other Builders, and Class A Members shall be entitled to one vote for each Lot owned. When more than one person and/or entity holds an interest in any Lot all such persons and/or other entity shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B             The Class B Member shall be the Declarant and Declarant shall be entitled to three (3) votes for each Lot owned. The Class B Member shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) When 75% of the total planned lots for the subdivision,  
including any then proposed expansions or additional phases of

the subdivision, have completed residences located thereon  
which have been deeded to homeowners; or

- (b) June 1, 2008,
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum permitted in Article IV, Section 3.

## ARTICLE IV

### CONVENANT FOR MAINTENANCE ASSESSMENTS

Section 1      Creation of the Lien and Personal Obligation of Assessments. Each "Owner" (but not the "Declarant" or "Other Builders") by acceptance of a deed for any lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, or other purposes, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.



Section 2     Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Subdivision and for the improvement and maintenance of the Common Area, or for other purposes of the Association. The assessments shall also be used to maintain the entrance area to the subdivision.

Section 3     Maximum Annual Assessment.     Until January 1, 1999, the annual assessment shall be \$120.00 dollars per Lot payable in advance.

- (a) From and after January 1, 1999, the annual assessment may be increased each year not more than 10% above the assessment for the previous year without a vote of the Membership.
- (b) From and after January 1, 1999, the annual assessment may be increased above 10% only with the consent of two-thirds (2/3) of a quorum of each class of Members who are present for voting in person or by proxy at a meeting duly called for this purpose.

Section 3.5.   Capital Contributions. Upon each sale of a home constructed upon a lot which is subject to this Declaration, there shall be collected from the Purchaser at the closing of said purchase, and paid to the Association, a one time up-front capital contribution of \$120.00. Said amount, if not collected at closing, shall constitute a lien upon said lot until paid.

Section 4.     Special Assessments for Capital Improvements or Other Purposes  
In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement

upon the property subject to this Declaration, including fixtures and personal property related thereto or for the other benefit of the Association provided that any such special assessment shall have the consent by a vote of two-thirds (2/3) of a quorum of each Class of Members who are voting in person or by proxy at meeting duly called for this purpose. The Board of Directors shall determine the dates and dates of payment of such special assessment subject to the approval of the Members a provided in this Section.

Section 5      Notice and Quorum for Any Action    Sufficient notice of any meeting called for the purpose of taking any action authorized by this Declaration is sufficient by posting a sign at the entry to the Subdivision at least 72 hours prior to the meeting denoting the time, date, and place of the meeting, and if applicable, the fact that a special assessment will be considering at such meeting. At any meeting, the presence of Members of proxies entitled to cast 40% of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, a "subsequent" meeting may be called subject to the same notice requirement, and the required quorum shall then be one half of the required quorum at the preceding meeting. No "subsequent" meeting shall be held more than 60 days after the first set meeting.

Section 6      Uniform Rate of Assessment    Both annual and Special Assessments must be fixed at a uniform rate for all Owners and maybe collected on a yearly or other basis as determined by the Board of Directors.

Section 7      Date of Commencement of Annual Assessments: Due Dates    The annual assessments provided for herein shall be calculated as to all Lots to which it applies on the first day of the month following the conveyance of the improved lot to an Owner. The annual assessments shall run for a calendar year from January 1 to December 31. The

first annual assessment shall be a prorated amount through December 31st of the first year following the year of purchase and shall be collected from the Owner at the closing of Owner's purchase, at the rate of assessment then established. That Owner shall not be effected by any change in the annual assessment then established. That Owner shall not be effected by any change in the annual assessment until January 1<sup>st</sup> of the year following the Owner's purchase, but shall be subject to special assessments as provided in Section 4. The Board of Directors shall fix the amount of the annual assessment and notice of the annual assessment shall be provided to every Owner subject thereto by mail or posting, generally fifteen (15) days or more before it is due. The due dates of annual assessments shall be established by the Board of Directors, but shall generally be January 15<sup>th</sup>. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8      Effect of Nonpayment of Assessments: Remedies of the Association      Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or file and foreclose it as a lien for the same against the property, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9      Subordination of the Lien to Mortgage      The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot

pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Mortgages are not required to collect assessments. Failure to pay assessments does not constitute a default under an insured mortgage.

Section 10    Exempt Property.        All property dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxes from the State of Georgia shall be exempt for the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 1.    Requirement for Plan Approval.    Except for the Declarant hereof, no building, fence, wall or other structure including but not limited to homes, shall be commenced, erected or maintained upon any part of the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing as to harmony of external and internal design and location in relation to surrounding structures and topography by the Board of Directors or by an Architectural Control Committee appointed by the Board of Directors and composed of at least one Member of the Board of Directors. In the event the Board of

Directors by majority vote, or its designated Architectural Control Committee by majority vote, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it in writing, approval will not be required and this section of this Article will be deemed to have been fully complied with, provided, however, that other Sections of this Article and of this Declaration shall continue to be enforceable in actions at law or in equity, including injunction and temporary Restraining Order by the Board of Directors, Architectural Control Committee, Declarant, Other Builders, and/or Owners unless a waiver of said requirement was expressly granted in writing by the Board of Directors or the Architectural Control Committee. All dwelling units must be a minimum of 1,600 square feet.

Section 2. Exterior Rules. The following, and such additional architectural landscaping or maintenance rules as the Board of Directors or the Architectural Control Committee shall adopt shall be enforceable in law or equity by the Board of Directors, the Architectural Control Committee, Declarant, Other Builders and/or Owners:

- (a) No vehicles of any description shall be parked on the streets of the Subdivision for more than four hours per natural day, excepting Declarant or Other Builders and its tradespeople's vehicles utilized in connection with the sale and construction of residences therein.
- (b) No satellite dish antennas, radio transmission or reception devices, nor television antennas of any sort shall be erected on the roof or in the yard of any residence, except that digital satellites or direct broadcast

satellites of 18" or less in diameter shall be permitted so long as said satellite is not visible from the street.

- (c) No basketball goals shall be erected so as to be visible from the street.
- (d) No clothesline, nor any clothes drying device, shall be erected so as to be visible from the street or any other residence.
- (e) All resident owned vehicles shall be parked in the garages of their respective residences for periods of time exceeding four hours.  
  
Inoperable vehicles or vehicles under repair shall be parked in the garage at all times during such period of repair or inoperability. Garage doors shall remain closed except during ingress and egress.
- (f) No dilapidated or unsightly vehicles or machinery shall be parked or stored in such a manner as to be visible from the street or any other residence. The Board of Directors or the Architectural Control Committee shall be the determinant as to whether a vehicle or machinery is dilapidated or unsightly.
- (g) No motor homes, campers, trailers, boats motorcycles, or commercial vehicles shall be parked or stored in such a manner as to be visible from the street or any other residence.
- (h) No vehicles, equipment, or materials shall be stored on any lot (except Declarant's or Other Builder's equipment and materials), whether covered or not, at a location which is visible from the street or any other residence.

(i) No signs shall be erected on any Lot for any purpose whatsoever, excepting a double-faced 3 square foot per side sign no more than 36 inches tall advertising a residence for sale. Any sign in violation of this will incur a \$100.00 per day fine. Declarant's or Other Builders signs are all hereby excepted.

(j) No fences shall be erected in the front lawns of any Lots.

(k) ALL FENCES MUST BE APPROVED BY THE BOARD OF DIRECTORS OR THE ARCHITECTURAL CONTROL

COMMITTEE. If any fence is erected on any Lot which has not been approved by the Board of Directors or the Architectural Control Committee, and if, fifteen days after having served notice to any Owner or Other Builder that said fence does not meet the approval of the Board of Directors or Architectural, the unacceptable fence still exists, the Board of Directors or the Architectural Control Committee may remove said fence at its option. Such Owner or Other Builder shall then be liable for any costs and charges incurred as a result of such correction, and should such Owner or Other Builder then not make remuneration within such terms as are then set, the costs and charges will be the basis of a lien against such Owner's or Other Builder's Lot.

(l) Each Owner and Other Builder shall maintain his Lot and the improvements thereon in a neat, clean, and eye-pleasing condition which shall include the maintenance of the front lawn of his Lot. If, fifteen days after having served notice to any Owner or Other Builder

of any deficiencies in this regard, any deficiency still exists, the Board of Directors or the Architectural control Committee may correct said deficiency at its option. Such Owner or Other Builder shall then be liable for any costs and charges incurred as a result of such correction, and should such Owner or Other Builder then not make remuneration within such terms as are then set, the costs and charges will be the basis of a lien against such Owner's or Other Builder's Lot.

(m) Any and all detention ponds and structures as shown per plat shall be maintained by the Association. The Association shall have the right of ingress and egress on any Lot that said detention ponds or any part thereof is found to the extent reasonably necessary to accomplish this purpose, as well as the right to remove or cause to be removed obstructions to said purpose and the right to demand the Owner (occupants of Owner's dwellings) or Other Builder of said Lot to take actions reasonably necessary in effecting such purpose.

Section 3. Lawn Maintenance. The Board of Directors or the Architectural Control Committee or their representatives, including, but not limited to a landscaping company or individual chosen by them, shall have the right to take actions necessary or convenient to accomplish the mowing of the front lawns of all Lots of Owners and Other Builders in the Subdivision which are not properly maintained by the Owner or Other Builder of the Lot at a minimum charge of \$50.00 per mow, and to maintain the entrance and common areas to the subdivision.



Section 4.     Release.   Each Owner and Other Builder, his descendants, ancestors, dependents, heirs, executors, and assigns, hereby fully releases, discharges, and holds harmless the Association and Declarant, their agents, officers, directors, stockholders, members, employees, representatives, successors, and assigns from any and all rights, claims, actions, causes of action, damages, losses or injuries of whatever form or kind, the Owner and Other Builder, his descendants, ancestors, dependents, heirs, executors, and assigns has or may hereafter have against the Association and Declarant, their agents, officers, directors, stockholders, members, employees, representatives, successors, and assigns arising from the right of the Association to correct any deficiency, remove any fence or mow the front lawn of any Owner's and Other Builder's Lot as set forth in this Article V. Each Owner and Other Builder, his descendants, ancestors, dependents, heirs, executors and assigns hereby assumes full responsibility for any injuries, damages, losses or liability which he may hereafter incur from the above specified right of the Association.

The right of the Association to correct any deficiency, remove any fence or mow the front lawn of an Owner's and Other Builder's Lot shall in no way effect the responsibility of an Owner and Other Builder to maintain his front lawn and remainder of his Lot in accordance with the provisions of Article V, Section 2, subsections (j) and (k) and other provisions of the Declaration and related documents.

Section 5.     Fines.   In addition to any other rights of enforcement of the provisions of this Declaration including, but not limited to, the Architectural Control provisions of Article V, Section 1, the rules set forth and which are promulgated in accordance with Article V, Section 3, the Board of Directors or the Architectural Control

Committee shall have the right to assess fines for and violations of said provisions not to exceed \$50.00 per day per violation for each day, or part of a day the violation remains uncured. The board of Directors or the Architectural control committee shall provide written notice to the violator, which notice shall specify the day of the beginning of the violation and the fact that the specified fine shall be assessed retroactive to the beginning of the violation until cured unless adequate explanation for the violation, in the sole discretion of the Board of Directors or the Architectural Control Committee, shall be given by the violator. In the event that a fine under this section is imposed then it shall be immediately due and payable and shall constitute a lien on the property, which may be filed and foreclosed, and shall bear interest at 12 percent (12%) per annum until paid. The lien of the fine provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment fine. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the fine of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot Owner from liability for any assessments thereafter becoming due or from the fine thereof. Mortgages are not required to collect assessments or fines. Failure to pay assessments does not constitute a default under the insured mortgage.

## **ARTICLE VI**

### **INSURANCE**

Section 1. Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area, if any, insured

against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for the property for which the insurance was carried by the Association are common expenses included in the annual assessments made by the Association.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other annual assessments made against such Lot Owner.

Section 3. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

## ARTICLE VII

### GENERAL PROVISION

Section 1.     Enforcement.   The Association, or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, except as provided in this Declaration.

Section 2.     Severability.   Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3.     Amendment.   The easements, covenants, conditions, and restrictions of this Declaration shall run with and bind the property, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument signed by seventy-five percent (75%) of each Class of Members. This Declaration may be amended during the first twenty (20) year period and thereafter by an instrument signed by not less than seventy-five percent (75%) of the members of Class A and seventy-five percent (75%) of the members of Class B Memberships. Any amendment must be recorded.

Section 4.     Annexation.   Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of each class of

Members. Additional land and Common Area may be annexed by the Declarant without the consent of the Members of Class A within five (5) years of the date of this instrument provided that the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") determine that the annexation is in accord with the general plan heretofore approved by them. Declarant specifically has the right to Annex contiguous Property.

Section 5. FHA/VA Approval. So long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA: Annexation of additional property, dedication of additional Common Area, and amendment of this Declaration of Easements, Covenants, Conditions and restrictions. Additionally, should the FHA or VA require any amendment to this Declaration, the Articles of Incorporation or the Bylaws, prior to or after initial approval of same, the Declarant is authorized to make such amendment(s) conforming said document(s) to the requirements of the FHA or the VA without consent of the Members of the Association.

Section 6. Indemnity. The Association shall have the right to retain legal counsel and to indemnify, defend, and hold harmless its directors, officers, agents and employees for actions arising out of their acts of behalf of the Association, except for intentional torts committed by them, either before or after such acts are committed by them.

Section 7. Attorney Fees. The prevailing party in any dispute under this Declaration or in the enforcement of the obligations and covenants hereunder shall be entitled to the award of reasonable attorney fees and litigation expenses in addition to other damages.

Section 8. Notices. It shall be the responsibility of each Member of the Association to notify the Secretary of the Association in writing of his name, current address, and telephone number for use in entering and maintaining his name in the membership rolls of the Association. The Association shall not be held responsible however for any unintentional failure to properly list the names, addresses, and telephone numbers of its Member.

**IN WITNESS WHEREOF**, the undersigned, being the Declarant herein, has hereunto set its hand and seal the 27<sup>th</sup> day of June, 1998

Sworn to and subscribed before me this **BENCHMARK/COVE LAKE, LLC.**

25<sup>th</sup> day of June, 1998

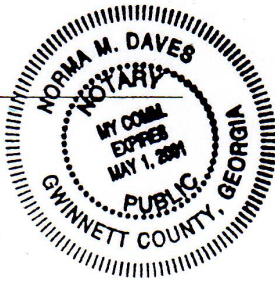
*Janet Brown*  
WITNESS

By: *Ralph Buck Davis*  
Ralph Buck Davis, Manager

*Norma M. Daves*

NOTARY PUBLIC

My Commission Expires:



(Notary Seal)

Ducky 1000  
102-F  
6111 Peachtree Dunwoody Rd  
Atlanta, Ga. 30328

Filed and Recorded Mar-09-1999 12:41pm  
1999-0019743

Cross Reference to Declaration of  
Covenants, Conditions, and Restrictions  
for Cove Lake, recorded in Deed Book  
10078, Page 540, DeKalb County Records.

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR COVE LAKE

THIS AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Cove Lake, made this 19th day of February, 1999, by Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, hereinafter referred to as "the Declarant".

WITNESSETH:

WHEREAS, Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, the owners of certain real property located in DeKalb County, Georgia, which property is attached hereto as Exhibit "A" and made a part hereof (hereinafter referred to as "added property"), and

WHEREAS, Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, filed the Declaration of Covenants, Conditions and Restrictions for Cove Lake on 6/26/98, at Deed Book 10078, Page 540, DeKalb County, Georgia Deed Records; and

WHEREAS Section Four of Article VII of said Declaration provides for the expansion of the Subdivision by the addition of property adjacent thereto; and

WHEREAS THE Declarant desires to amend said Declarations to submit the property described in Exhibit "A" to the Terms and Conditions of the Declaration;

NOW, THEREFORE, for and in consideration of the above premises and for mutual considerations, it is hereby agreed that the Declaration of Covenants, Conditions and Restrictions for Cove Lake, be amended as follows:

- 1) That the property described in Exhibit "A", attached hereto and made a part hereof, is hereby included in the original Declaration as though originally made a part thereof.
- 2) Except as amended hereby, the original Terms and Conditions of the declaration remain in full force and effect.

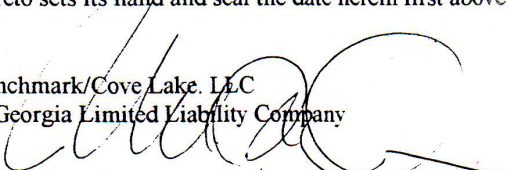
IN WITNESS WHEREOF, the Undersigned hereto sets its hand and seal the date herein first above

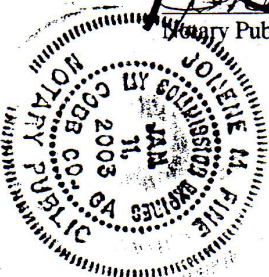
written

Witness

Notary Public

Benchmark/Cove Lake, LLC  
A Georgia Limited Liability Company

By:   
Ralph B. Davis, Manager



Jeanette Rozier  
Clerk of Superior Court  
DeKalb County, Georgia

EXHIBIT A

All that Tract or Parcel of Land lying and being in Land Lots 57 and 58 of the 16<sup>th</sup> District, DeKalb County, Georgia, and being more particularly described as Lots 4 through 53 inclusive, each as shown on the Final Plat of Cove Lake-Unit Three prepared by Bingham Associates, Inc. and recorded at Book 107, Page 85, DeKalb County Records.



Return to:  
Benchmark/Cove Lake, LLC  
6111 Peachtree-Dunwoody Rd  
Suite F-102  
Atlanta, GA 30328

Cross Reference to Declaration of  
Covenants, Conditions, and Restrictions  
for Cove Lake, recorded in Deed Book  
10078, Page 540 DeKalb County Records.  
First Amendment at Deed Book 10513,  
Page 648, DeKalb County Records

SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR COVE LAKE

THIS AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Cove Lake, made this 27th day of May, 1999, by Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, hereinafter referred to as "the Declarant".

WITNESSETH

WHEREAS, Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, the owners of certain real property located in DeKalb County, Georgia, and

WHEREAS, Benchmark/Cove Lake, LLC, a Georgia Limited Liability Company, filed the Declaration of Covenants, Conditions and Restrictions for Cove Lake on 6/26/98, at Deed Book 10078, Page 540, DeKalb County, Georgia Deed Records; and

WHEREAS THE Declarant desires to amend said Declarations to submit the property described below to the Cove Lake Homeowners Association, Inc.;

NOW, THEREFORE, for and in consideration of the above promises and for mutual considerations, it is hereby agreed that the Declaration of Covenants, Conditions and Restrictions for Cove Lake be amended as follows:

- 1.) Section 3.3 of Article I is hereby deleted in its entirety and replaced by the following:

Article I, Section 3.3 - Fee simple ownership of certain property referred to as "Parcel A - Association Property" as depicted on the Final Plat of Cove Lake Unit Two re-recorded at Plat Book 108, Page 93, DeKalb County Records.

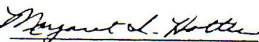
This property is provided for recreational use, including but not limited to fishing, for all members of the Association.

The Declarant hereby certifies that this Common Area has been conveyed to the Association free and clear of all encumbrances. Absolute liability is not imposed on Members for damage to the Common Area or Lots, including improvements, in the Planned Unit Development, instead, Members are only responsible for their own negligence and the negligence of their minor children, employees, and agents as provided by Georgia State Law.

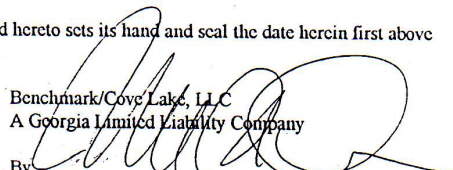
- 2.) An Easement for Access over and upon Lots 38 and 39 as shown on the re-recorded Final Plat of Cove Lake, Unit Three re-recorded Plat Book 108, Page 94, DeKalb County Records. This Easement is for the purpose of providing additional pedestrian access to "Parcel A - Association Property" referred to in #1 herein above.


- 3.) Except as amended hereby, the original Terms and Conditions of the declaration remain in full force and effect.

IN WITNESS WHEREOF, the Undersigned hereto sets its hand and seal the date herein first above written.

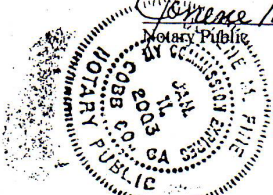
  
Margaret L. Hatten  
Witness

  
Joseph M. Lorie  
Notary Public

  
Benchmark/Cove Lake, LLC  
A Georgia Limited Liability Company

By:   
Ralph B. Davis, Manager

Deed Book 10715 Pg 690  
Filed and Recorded Jul-01-1999 04:24pm  
1999-0067471  
Jeanette Rozier  
Clerk of Superior Court  
DeKalb County, Georgia  
I HAVE NOTED THE DATE OF THIS RECORDING AND THE DATE OF THE ORIGINAL RECORDING.



RECORDED JUN-17-1999 09:05AM  
1999-0080380  
Real Estate Transfer Tax \$0.00  
Jeanette Rozier  
Clerk of Superior Court  
DeKalb County, Georgia

CLERK, SUPERIOR COURT  
By: Jetta L. Dunphy  
Deputy Clerk

AFTER RECORDING RETURN TO:  
WILLIAM C. MCFEE, JR.  
SIMMONS, WARREN, SZCZECKO & MCFEE, P.A.  
315 W. PONCE DE LEON AVENUE, SUITE 850  
DECATUR, GEORGIA 30030

STATE OF GEORGIA  
COUNTY OF DEKALB

LIMITED WARRANTY DEED

THIS INDENTURE, made this 4<sup>th</sup> day of June, 1999, between BENCHMARK/COVE LAKE, LLC, a Georgia limited liability company, as Grantor, and COVE LAKE HOMEOWNERS' ASSOCIATION, INC., a Georgia non-profit corporation, as Grantee.

WITNESSETH:

That the said Grantor, for and in consideration of Ten Dollars and other valuable consideration, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said Grantee, and the heirs, successors and assigns of Grantee, the following:

All that tract or parcel of land lying and being in Land Lots 57 and 72 of the 16th District of DeKalb County, Georgia, being shown or described as Parcel A - Association Property on a plat recorded in Plat Book 108, Page 93, in the Office of the Clerk of Superior Court of DeKalb County, Georgia.

TO HAVE AND TO HOLD the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in any wise appertaining, to the only proper use, benefit and behoof of the said Grantee, and the heirs, successors and assigns of Grantee, forever, in fee simple.

And the said Grantor will warrant and forever defend the right and title to the above-described property unto the said Grantee, and the heirs, successors and assigns of Grantee, against the claims of all persons claiming by, through or under Grantor.

The terms "Grantor" and "Grantee", and any pronouns relating to Grantor and Grantee, shall be construed and interpreted with such changes in gender and number as the context requires.





NOW, THEREFORE, for and in consideration of the agreement of Murphey to amend its Zoning Application as hereinafter provided to incorporate certain conditions of zoning and the promise of Cove Lake to support the approval of the Zoning Application as conditioned and in consideration of the mutual benefits flowing between the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of said parties, Cove Lake and Murphey hereby agree as follows:

1. Murphey shall amend/incorporate into its Zoning Application the Conditions of Zoning/Covenants attached hereto as Exhibit "A" and the Land Plan attached as Exhibit "B" and shall take all reasonable and necessary measures to ensure that the Zoning Application be granted as amended.

2. Upon the rezoning of the Subject Property, Cove Lake shall record this Agreement as a covenant on its title to the Subject Property. The Agreement shall be recorded and shall run with and bind the Subject Property and any successors, successors-in-title, legal representatives and assigns of Murphey and shall run to the benefit of and be enforceable by Cove Lake and its successors, successors-in-title, legal representatives and assigns. The Agreement shall extend in accordance with O.C.G.A. Section 44-5-60(b) and shall be recorded so as to be superior to all encumbrances.

3. Cove Lake shall send, upon request, at least one (1) representative to any County Commission hearing regarding the Zoning Applications to speak, if requested, in support of the Zoning Application.

4. MISCELLANEOUS.

- a. This Agreement shall be binding on the successors, successors-in-title, legal representatives and assigns of Cove Lake and Murphey. Time is of the essence. This Agreement shall survive the sale of all or a portion of the Subject Property.
- b. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument. Any party hereto may record this Agreement.
- c. No representations that are not contained herein shall be binding upon the parties. Each signatory hereto is authorized to execute this Agreement.
- d. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and shall be controlled in all respects by the laws of the State of Georgia. No modification of this Agreement, including any Exhibit thereto, shall have any force or effect except where agreed in writing, signed by all parties hereto.
- e. Should any part of this Agreement be declared invalid or void by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion or portions hereof, and such remaining portion or portions shall be deemed to be in full force and effect.

- f. The introductory paragraph and the preambles of this Agreement are incorporated into this Agreement and made a part hereof as if fully restated herein in their entirety. Exhibits "A" and "B" are each attached hereto and incorporated herein by this reference. A waiver by any of the parties hereto of any breach hereof shall not operate nor be construed as a waiver of any subsequent breach by any party.
- g. As it is the intent of the parties hereto that the Agreement be enforceable, the parties hereto do hereby waive, surrender and forego any defense which might prevent the enforcement of this Agreement as a covenant, including, but not limited to the following: any defense regarding any lack of privity, any issue of standing, or consideration. The parties further acknowledge the ability, if necessary, to enforce this Agreement as a covenant through privity of conscience.

IN WITNESS WHEREOF, this Agreement is signed sealed and delivered as of the day and year first written above.

**COVE LAKE HOMEOWNERS ASSOCIATION, INC.**

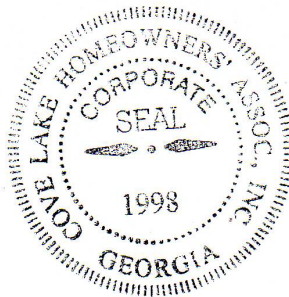
By: [Signature] (SEAL)  
 Its: President

Attest: [Signature]  
 Its: Secretary

[CORPORATE SEAL]

Sworn to and subscribed before me this 13 day of June, 2003.

[Signature]  
 Witness



[Signature]  
 Notary Public

**Cynthia B. Prather**  
 Notary Public  
 DeKalb County, Georgia  
 My Commission Expires Sept. 8, 2006

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

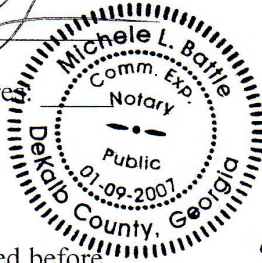
William M. Murphey

William M. Murphey (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen J. Fleming  
Witness

Michele L. Battle  
Notary  
My Commission Expires



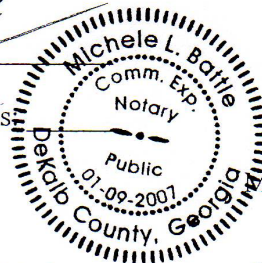
W. Marshall Murphey Sr.

W. Marshall Murphey Sr. (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen J. Fleming  
Witness

Michele L. Battle  
Notary Public  
My Commission Expires



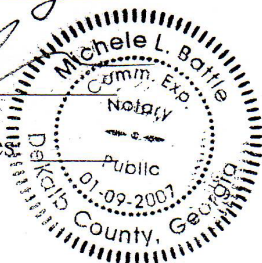
Michael L. Murphey

Michael L. Murphey (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen J. Fleming  
Witness

Michele L. Battle  
Notary Public  
My Commission Expires



## EXHIBIT "A"

### Conditions of Zoning

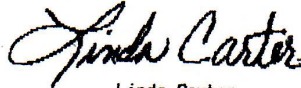
1. These conditions apply to Zoning Application CZ-03042 and the referenced plans shall be made a part of the Zoning Application and are incorporated by reference.
2. In lieu of a 50' transitional buffer zone, a more extensive tree save area consisting of a 60' transitional buffer zone shall be provided to the rear property line as shown on the Land Plan, being that certain plan prepared for the Covington Highway Project by Engineering Management Incorporated dated June 11, 2003, Job No. 03025, Sheet 1, last revised June 23, 2003. Owner of the Subject Property shall not remove trees from this tree save area unless diseased or necessary to install utility crossings, or to install the required 6' high wooden screening fence. Notwithstanding anything to the contrary, the utilities shall not cross the tree save area unless another path is not reasonably available. The trees actually saved in the entire tree save area, as the area is designated on the Land Plan, shall apply toward the tree preservation requirements under the Tree Protection Ordinance ("TPO") §14-39(g). For purposes of this paragraph, tree save area shall be defined in §14-39 of the DeKalb County Code.
3. Prior to commencing development for the Subject Property, the Owner shall clearly mark all tree save areas designated on the Land Plan with appropriate temporary fencing and/or other indicators so as to attempt to prevent loss or damage to trees within these areas.
4. Owner shall provide the following planted buffers in accordance with the Land Plan:
  - a. A 10' foot landscape strip between Covington Highway and the brick entry column adjacent to Cove Lake Road and shown on the site plan prepared for William Marshall Murphey by Pearson & Associates, Inc. dated February 21, 2003 and submitted by Applicant as part of the Zoning Application ("Site Plan").
  - b. A 30' landscape strip to run approximately 120' from the brick entry column adjacent to Cove Lake Road and shown on the Site Plan to the beginning of Cove Lane.
  - c. Should the right-of-way be altered and/or reduced, all landscape strips shall be moved adjacent to the revised right-of-way.
  - d. Within the landscaping strips, the size of the shrubs planted shall be a size which is expected by local landscaping standards to allow for said shrubs to reach maturity within three to four years from the date of installation. Trees will be in accordance with a landscaping plan approved by the DeKalb County Arborist.
5. The Applicant agrees to erect a 6' wooden screening fence no less than 50' from the rear property line of the Subject Property within or on the edge of the 60' transitional buffer zone.



6. Owner shall restrict the southernmost 441' of the Subject Property, as such area is shown on the Land Plan, to all uses currently permitted in the NS (Neighborhood Shopping) District as defined in Division 24, Section 27-558 of the DeKalb County Code, excluding use for a convenience store.
7. Owner shall restrict the northernmost 289' portion of the Subject Property, as such area is shown on the Land Plan, to all of those uses currently permitted in the C-1 (Local Commercial) District as defined in Division 25, Section 27-578 of the DeKalb County Code, excluding the following uses:
  - a. Liquor store;
  - b. Transitional housing;
  - c. Pawn shops;
  - d. Check cashing; and
  - e. Homeless shelter.
8. The front of all buildings constructed on the rear 441' of the Subject Property shall face the front or the interior of said property and not face Cove Lake Road.
9. Applicant agrees that there shall be only one curb cut along the northernmost 289' portion of the Subject Property onto Cove Lake Road, with such curb cut being subject to approval of the DeKalb Traffic Engineer.
10. There shall be no access along the southernmost 441' portion of the Subject Property onto Cove Lake Road.
11. Subject to any greater limitation by DeKalb County: (1) construction activities shall be limited to occurring during the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, 9:00 a.m. to 3:00 p.m. on Saturday; (2) work on Sunday will be limited to interior work on the buildings erected on the Subject Property; and (3) use of heavy outdoor machinery or similar equipment shall strictly be prohibited on Sunday.
12. Lighting on top, rear, or side of buildings erected should be directed inward and downward, away from adjoining residential properties. All such lighting shall use environmentally sensitive fixtures which shall be shielded, if necessary, so as to avoid light spillage onto residentially zoned properties which are adjacent to the subject property located at the corner of Cove Lake Road and Covington Highway, DeKalb County, Georgia and the adjacent Cove Lake subdivision property. All other exterior lighting fixtures shall not be more than 25' feet high or the height of the buildings on the Subject Property, whichever is less, and shall be designed so as to minimize light spillage onto the adjacent residentially zoned properties. The provisions of this paragraph shall be subject to any greater limitations by DeKalb County.

Exhibit "A" (Continued)  
Page 3 of 3

13. There shall be no illuminated signage on the tops of or attached to the buildings shown on the Land Plan. No neon, strobe, flashing or other similar lighting shall face the Cove Lake subdivision property.
14. Parking areas shall be landscaped in accordance with the requirements of Section 27-753 of the DeKalb County Zoning Ordinance.
15. The Applicant agrees that the wooden screening fence will be reasonably maintained.
16. Maintenance of the plantings within all buffer areas and landscape strips shall be to a consistently high-quality standard and shall be the responsibility of the Owner.



Linda Carter  
Clerk of Superior Court DeKalb Cty, Ga.  
I HEREBY DO AND BY WORD OF MOUTH AND BY WORD OF WRIT DO GRANT AND CONVEY AND CONFIRM

-----[SPACE ABOVE RESERVED FOR RECORDING DATA]-----

Return to: Weissman, Nowack, Curry & Wilco, P. C.  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, Georgia 30326  
Attn: Ellen J. Fleming, Esq.

STATE OF GEORGIA  
COUNTY OF DEKALB

Cross Reference: Owner's Deed Book 4680  
Page 549  
Deed Book 4680  
Page 554  
Deed Book 9755  
Page 167  
Deed Book 9755  
Page 170  
Deed Book 11818  
Page 325

**ZONING AGREEMENT**

THIS ZONING AGREEMENT ("Agreement") is entered into this 24th day of June, 2003, by and between Cove Lake Homeowners Association, Inc., a Georgia nonprofit corporation ("Cove Lake") and William M. Murphey, W. Marshall Murphey, and Michael L. Murphey (collectively hereinafter "Murphey" or "Owner").

**WITNESSETH:**

WHEREAS, Murphey is seeking approval from the DeKalb County Commission as to certain changes to zoning as more fully reflected in DeKalb County Zoning Application Number CZ-03042, such application being a part of the DeKalb County records and being incorporated herein by this reference ("Zoning Application"); and

WHEREAS, Cove Lake is the association responsible for the property described in the Declaration of Easements, Covenants, Conditions and Restrictions of Cove Lake, as amended, as recorded at Deed Book 78, Page 540, *et seq.*, DeKalb County, Georgia records ("Cove Lake Community"); and

WHEREAS, Murphey is the Owner of approximately 8.1493 acres of land (the "Subject Property") located at the corner of Cove Lake Road and Covington Highway, Lithonia, Georgia 30058, as more fully described in the Zoning Application; and

WHEREAS, Cove Lake and Murphey desire to enter into this Agreement governing the development of the Subject Property.

NOW, THEREFORE, for and in consideration of the agreement of Murphey to amend its Zoning Application as hereinafter provided to incorporate certain conditions of zoning and the promise of Cove Lake to support the approval of the Zoning Application as conditioned and in consideration of the mutual benefits flowing between the parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of said parties, Cove Lake and Murphey hereby agree as follows:

1. Murphey shall amend/incorporate into its Zoning Application the Conditions of Zoning/Covenants attached hereto as Exhibit "A" and the Land Plan attached as Exhibit "B" and shall take all reasonable and necessary measures to ensure that the Zoning Application be granted as amended.
2. Upon the rezoning of the Subject Property, Cove Lake shall record this Agreement as a covenant on its title to the Subject Property. The Agreement shall be recorded and shall run with and bind the Subject Property and any successors, successors-in-title, legal representatives and assigns of Murphey and shall run to the benefit of and be enforceable by Cove Lake and its successors, successors-in-title, legal representatives and assigns. The Agreement shall extend in accordance with O.C.G.A. Section 44-5-60(b) and shall be recorded so as to be superior to all encumbrances.
3. Cove Lake shall send, upon request, at least one (1) representative to any County Commission hearing regarding the Zoning Applications to speak, if requested, in support of the Zoning Application.
4. MISCELLANEOUS.
  - a. This Agreement shall be binding on the successors, successors-in-title, legal representatives and assigns of Cove Lake and Murphey. Time is of the essence. This Agreement shall survive the sale of all or a portion of the Subject Property.
  - b. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument. Any party hereto may record this Agreement.
  - c. No representations that are not contained herein shall be binding upon the parties. Each signatory hereto is authorized to execute this Agreement.
  - d. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and shall be controlled in all respects by the laws of the State of Georgia. No modification of this Agreement, including any Exhibit thereto, shall have any force or effect except where agreed in writing, signed by all parties hereto.
  - e. Should any part of this Agreement be declared invalid or void by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion or portions hereof, and such remaining portion or portions shall be deemed to be in full force and effect.

- f. The introductory paragraph and the preambles of this Agreement are incorporated into this Agreement and made a part hereof as if fully restated herein in their entirety. Exhibits "A" and "B" are each attached hereto and incorporated herein by this reference. A waiver by any of the parties hereto of any breach hereof shall not operate nor be construed as a waiver of any subsequent breach by any party.
- g. As it is the intent of the parties hereto that the Agreement be enforceable, the parties hereto do hereby waive, surrender and forego any defense which might prevent the enforcement of this Agreement as a covenant, including, but not limited to the following: any defense regarding any lack of privity, any issue of standing, or consideration. The parties further acknowledge the ability, if necessary, to enforce this Agreement as a covenant through privity of conscience.

IN WITNESS WHEREOF, this Agreement is signed sealed and delivered as of the day and year first written above.

**COVE LAKE HOMEOWNERS ASSOCIATION, INC.**

By: [Signature] (SEAL)  
Its: President

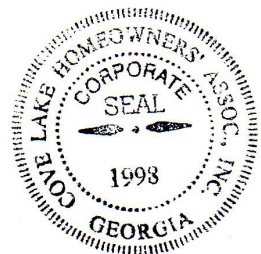
Attest: [Signature]  
Its: Secretary

[CORPORATE SEAL]

Sworn to and subscribed before me this 15 day of July, 2003.

[Signature]  
Witness

[Signature]  
Notary Public  
My Commission Expires Sept. 8, 2006  
Cynthia B. Prather  
Notary Public  
DeKalb County, Georgia  
My Commission Expires Sept. 8, 2006



[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

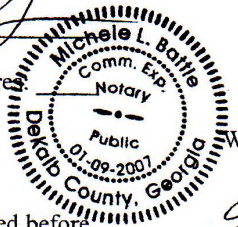
William M. Murphey

William M. Murphey (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen Fleming  
Witness

[Signature]  
Notary  
My Commission Expires



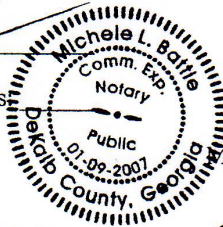
W. Marshall Murphey Sr.

W. Marshall Murphey Sr. (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen Fleming  
Witness

[Signature]  
Notary Public  
My Commission Expires



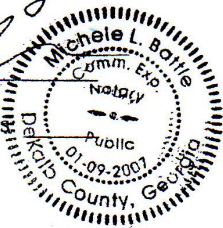
Michael L. Murphey

Michael L. Murphey (SEAL)

Sworn to and subscribed before me this 24th day of June, 2003.

Ellen Fleming  
Witness

[Signature]  
Notary Public  
My Commission Expires



298866\_1.DOC(8327)

**EXHIBIT "A"**

Conditions of Zoning

1. These conditions apply to Zoning Application CZ-03042 and the referenced plans shall be made a part of the Zoning Application and are incorporated by reference.
2. In lieu of a 50' transitional buffer zone, a more extensive tree save area consisting of a 60' transitional buffer zone shall be provided to the rear property line as shown on the Land Plan, being that certain plan prepared for the Covington Highway Project by Engineering Management Incorporated dated June 11, 2003, Job No. 03025, Sheet 1, last revised June 23, 2003. Owner of the Subject Property shall not remove trees from this tree save area unless diseased or necessary to install utility crossings, or to install the required 6' high wooden screening fence. Notwithstanding anything to the contrary, the utilities shall not cross the tree save area unless another path is not reasonably available. The trees actually saved in the entire tree save area, as the area is designated on the Land Plan, shall apply toward the tree preservation requirements under the Tree Protection Ordinance ("TPO") §14-39(g). For purposes of this paragraph, tree save area shall be defined in §14-39 of the DeKalb County Code.
3. Prior to commencing development for the Subject Property, the Owner shall clearly mark all tree save areas designated on the Land Plan with appropriate temporary fencing and/or other indicators so as to attempt to prevent loss or damage to trees within these areas.
4. Owner shall provide the following planted buffers in accordance with the Land Plan:
  - a. A 10' foot landscape strip between Covington Highway and the brick entry column adjacent to Cove Lake Road and shown on the site plan prepared for William Marshall Murphey by Pearson & Associates, Inc. dated February 21, 2003 and submitted by Applicant as part of the Zoning Application ("Site Plan").
  - b. A 30' landscape strip to run approximately 120' from the brick entry column adjacent to Cove Lake Road and shown on the Site Plan to the beginning of Cove Lane.
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Exhibit "A" (Continued)  
Page 2 of 3

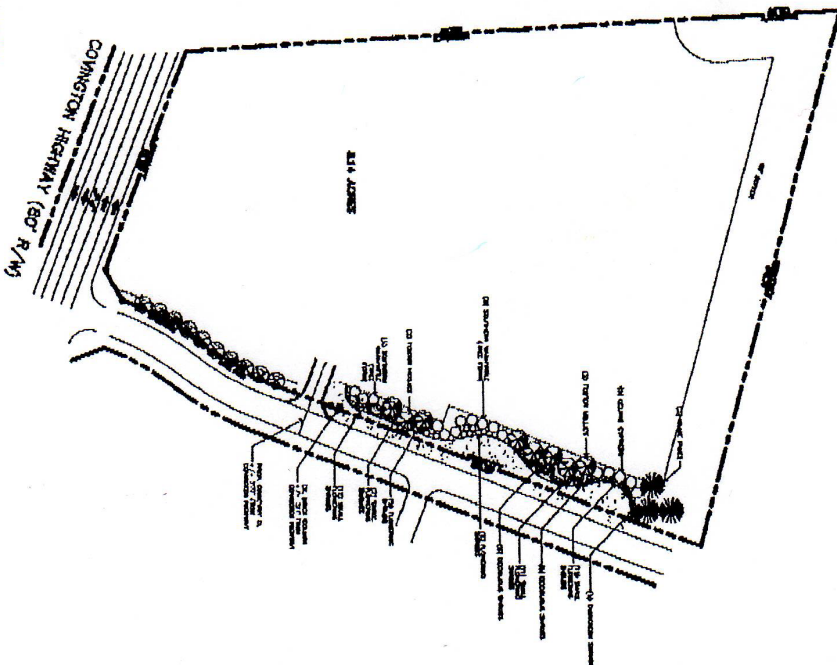
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Exhibit "A" (Continued)  
Page 3 of 3


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EXHIBIT "B"  
LAND PLAN



NOTE: EXHIBIT "B" IS A PRELIMINARY PLAN.  
IT IS NOT INTENDED TO BE A FINAL PLAN.  
IT IS NOT INTENDED TO BE A FINAL PLAN.  
IT IS NOT INTENDED TO BE A FINAL PLAN.



	1-1-85 1-1-85 1-1-85	CONCEPT PLAN 1-1-85 1-1-85	<b>COVINGTON HIGHWAY</b> DEKALB COUNTY, GEORGIA	<b>EMI ENGINEERING MANAGEMENT INCORPORATED</b> CIVIL AND MECHANICAL ENGINEERING 1000 W. BROAD ST. S.W. ATLANTA, GA. 30334	DATE NO. OF SHEETS SHEET NO.	1-1-85 1-1-85 1-1-85
	PROJECT			REVISIONS		

Deed Book 14734 Pg 461

*Linda Carter*

Linda Carter  
 Clerk of Superior Court Dekalb Cty. Ga.  
 I HEREBY DO AND BY THESE MY HANDS AND SEAL DO GRANT AS SHOWN ON THESE TWO DEEDS TWO THIRDS & MORE